

### **Purpose of this policy**

In order to manage the spread and impacts of Psa-V, there are now rules governing disease management, monitoring, movement and the development of plans. Achieving compliance through voluntary means will remain the primary focus when implementing the National Pest Management Plan (NPMP), but the ability to enforce requirements in significant situations of non-compliance will ensure the most efficient management of the disease.

This policy has been developed by Kiwifruit Vine Health (KVH). This policy is a statement of principles. It is intended to reflect the existing law and not intended to amend the law or impose additional legal or professional obligations upon legal practitioners or other individuals.

KVH considers that it is important, as a public management agency and under the NPMP, to have a clear Model Litigant Policy and to commit to acting as a model litigant. The phrase 'model litigant' is often used but can have varying meanings. This policy sets out the KVH's application of that phrase.

Ensuring compliance with this policy is primarily the responsibility of the Chief Executive of KVH and issues relating to compliance with this policy are to be referred to the Chief Executive and KVH Board (as required). External lawyers may be engaged in litigation on behalf of KVH and are expected to act in accordance with the principles stated in the policy and to assist KVH to comply.

KVH may issue further guidelines relating to the interpretation or implementation of the policy.

### **Application of the Policy**

This policy applies to all civil litigation conducted by or involving KVH (referred to in this policy as litigation).

### **Relationship between KVH and the Ministry of Primary Industries (MPI) in relation to prosecution**

KVH and MPI have mutual interest in taking successful enforcement action under the NPMP, where a prosecution is the desired compliance outcome. KVH and MPI have agreed an operating protocol in relation to compliance and enforcement matters (see attached appendix A).

Where KVH refers a 'matter that requires investigation with a view to prosecution' to MPI, MPI will operate in accordance with its relevant policies and with the aforementioned protocol.

### **The Policy**

KVH will act as a model litigant in the conduct of litigation.

### **Meaning of 'model litigant'**

This policy means that KVH will act honestly and in accordance with the law and the court rules. It requires KVH to act with complete propriety, fairly and in accordance with the highest professional standards.

### **The policy requires KVH to, specifically:**

- Take and defend litigation in accordance with KVH as the management agency responsible for implementing the National Pest Management Plan (NPMP).
- KVH use enforcement criteria to assist it in its discretionary activities when making decisions on whether to refer 'an investigation with a view to prosecution' to MPI, or open an investigation and decide what enforcement action it will take at the end of an investigation.
- Apply the criteria across KVH's range of enforcement responsibilities and at each stage of its enforcement process.
- Apply an administrative discretion over a wide range of matters including the strength of KVH's case, the availability of funds, competing claims on those funds by other cases and assessments of the comparative importance of the various cases in which KVH is involved.

KVH gathers information from members of the public and industry, market and business specific monitoring. KVH considers the available information for its relevance to KVH's responsibilities and current work programme, the enforcement criteria and priority areas for new enforcement work.

KVH decides whether to refer an investigation with a view to prosecution to MPI, or whether to commence or continue enforcement action, the most appropriate type(s) of enforcement action and the most appropriate response in each case. To assist it in making these decisions, KVH applies the following enforcement criteria:

- extent of detriment;
- seriousness of conduct;
- Grower & Public interest.

#### **Extent of Detriment**

Detriment is assessed by applying both quantitative and qualitative measures to determine the impact and consequences of the alleged contravention. The greater the likely level of detriment arising from the conduct in question, the more likely it is that KVH will take or continue with enforcement action.

In assessing detriment, KVH considers the following questions:

- Are growers or industry businesses likely to suffer and to what extent?
- Is the behaviour or lack of behaviour likely to increase the Psa- V inoculum levels and risks to other growers within a region?
- Is the behaviour deliberate or intentional to not comply with the legal requirements under the NPMP?

#### **Seriousness of Conduct**

The more serious the conduct, the more likely it is that KVH will begin (including referring an investigation to MPI) or continue enforcement action.

In assessing the conduct, KVH considers the following questions:

- Is the conduct deliberate, reckless or very careless?
- Is the conduct repeat or on-going behaviour?
- Is there a serious departure from expected orchard management behaviour?
- Can the conduct be undone?

#### **In the Grower & Public Interest**

KVH must have regard to a number of factors in the wider grower & public interest. In assessing public interest KVH considers the following questions:

- Is there likely to be widespread grower & public interest in the issue?
- Would a decision not to commence or continue enforcement action likely undermine grower & public confidence in the law?
- Is it more appropriate for another agency or an affected party, to address the issue?
- Are there any mitigating or aggravating features involved?
- Do the personal circumstances of the parties involved argue for or against enforcement action?
- Is there a significant need to clarify the law?
- Is it necessary to reinforce the application of the legislation?
- Are the issues timely?

KVH considers the criteria with the available information and decide what action is required in the context of KVH's overall activities. KVH will liaise with MPI in the implementation of this policy, including determining whether in the first instance MPI will lead the specific investigation and possibly resulting prosecution. In applying the criteria, KVH is also mindful of the changes it wishes to achieve from taking or continuing enforcement action.

## Appendix A

<p>Compliance and enforcement</p>	<ul style="list-style-type: none"> <li>• KVH is responsible for managing overall compliance with the NPMP.</li> <li>• KVH and MPI have mutual interest in taking successful enforcement action under the NPMP, where a prosecution is the desired compliance outcome.</li> </ul>	<ul style="list-style-type: none"> <li>• KVH able to refer ‘matters that required investigation with a view to prosecution’ to MPI.</li> <li>• Where such matters are identified, KVH will engage MPI at the earliest possible stage so that MPI can work with KVH to confirm evidence is captured to ensure admissibility in any subsequent proceedings.</li> <li>• KVH will maintain robust record keeping systems for any compliance contact they have that could assist any future prosecution cases.</li> <li>• If there are matters where KVH is unsure if it would meet the threshold of referral to MPI then they can contact Dave Blake, MPI, for advice and discussion prior to sending a request for investigation.</li> <li>• Requests for investigations with a view to prosecution would be in the form of a report detailing the case supported by any other relevant documentation.</li> <li>• Requests for MPI investigation services would come via Dave Blake. Dave can then assess and either allocate to a North Region investigator or distribute out to Steve Ham or John Gibson for central or south regions.</li> <li>• Once MPI have been asked to investigate a matter then MPI is responsible for managing the investigation, but will maintain a good information sharing protocol with KVH to ensure they are appraised of progress and key decisions, and MPI will consult the KVH CEO before making a decision on whether to proceed with a prosecution.</li> </ul>
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